

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL KASPRZAK,

Plaintiff,

vs.

Case No. 12-12140
Hon. Gershwin Drain/Mag. Randon

ALLSTATE INSURANCE COMPANY,

Defendant.

CHRISTOPHER J. TRAINOR (P42449)
AMY J. DEROUIN (P70514)
CHRISTOPHER TRAINOR & ASSOC
Attorneys for Plaintiff
9750 Highland Rd.
White Lake, MI 48386
(248) 886-8650

DONALD C. BROWNELL (P48848)
NICOLAS A. VESPRINI (P66061)
VANDEVEER GARZIA, P.C.
Attorneys for Defendant
840 W. Long Lake Road, Suite 600
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**DEFENDANT'S MOTION TO REINSTATE TO APPROVE
AND ENFORCE SETTLEMENT**

NOW COMES, Defendant, ALLSTATE INSURANCE COMPANY, by and through its attorneys, VANDEVEER GARZIA, P.C., and for its Motion to Reinstate to Approve and Enforce Settlement, states as follows:

1. This case arises out of Plaintiffs' claims for first party no-fault benefits allegedly arising out of a motor vehicle accident that occurred on May 10, 2011.

(Exhibit A, Complaint).

2. This case was previously litigated and settled by both parties at a settlement conference on May 2, 2013 with Magistrate Randon for One Hundred Forty

Thousand Dollars (\$140,000). The settlement conference was put on record indicating the settlement of past and present unpaid medical expenses rendered through May 2, 2013, (with the exception of services rendered by Michigan Spine and Brain), in addition to claims of past, present and future Wage Loss Benefits, Attendant Care Services, and Household Replacement Service expenses.

3. The Stipulated Order of Dismissal was entered by this Court on May 28, 2013. **(Exhibit B, Order of Dismissal).**

4. A Settlement Agreement and Release was prepared reflecting the settlement placed on the record. **(Exhibit C, Settlement Agreement and Release).**

5. The medical bills and providers' claims that were settled included, among numerous provides those claims of Dr. Ronald Lederman, totaling \$22,934.00 for services.

6. Subsequent to said settlement, Dr. Ronald Lederman filed a Complaint against Defendant regarding the unpaid medical bills involved in this action, included in the settlement. **(Exhibit D, Lederman Complaint).**

7. When it was brought to Dr. Lederman's attention that his claims of unpaid medical bills through May 2, 2013 should be dismissed per the prior settlement with Plaintiff, the parties learned that at the time of the agreed upon settlement, at the Settlement Conference, Plaintiff had allegedly filed for bankruptcy.

8. Subsequent to learning of this alleged bankruptcy, Defendant and counsel for Dr. Lederman have attempted to contact Plaintiff's counsel and/or trustee for purposes of executing closing documents and/or finalizing this settlement and distributing the proceeds.

9. To date, the Settlement Agreement on the record and agreed upon by both parties, has not been finalized. In turn, Defendant requests that this Court reopen this case to approve and enforce the Settlement Agreement for the consideration of One Hundred Forty Thousand Dollars (\$140,000).

10. Settlement agreements entered into by the parties are binding contracts once entered into the record. *Farm Bureau v. Buckallew*, 262 Mich.App. 169, 178 ; 685 N.W.2d 675 (2004), vacated on other grounds 471 Mich. 940; 690 N.W.2d. 93 (2004).

11. As such, Defendant respectfully requests that the Court reinstate this cause of action, from its administrative closing, for purposes of approving and enforcing the settlement put on the record May 2, 2013.

WHEREFORE, Defendant, Allstate Insurance Company, respectfully requests that this Honorable Court enter an Order granting Defendant's Motion to Reinstate to Approve and Enforce Settlement.

Respectfully Submitted by,

VANDEVEER GARZIA, P.C.

By: /s/Donald Brownell
DONALD C. BROWNELL (P48848)
NICOLAS A. VESPRINI (P66061)
Attorneys for Defendant
840 W. Long Lake Road, Suite 600
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Date: January 7, 2015

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DANIEL KASPRZAK,

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**DEFENDANT ALLSTATE INSURANCE COMPANY'S BRIEF IN SUPPORT OF ITS
MOTION TO REINSTATE TO APPROVE AND ENFORCE SETTLEMENT**

NOW COMES, Defendant, ALLSTATE INSURANCE COMPANY, and for its Brief in Support of Its Motion to Reinstate to Approve and Enforce Settlement, states as follows.

For its Brief in Support of Its Motion to Reinstate to Approve and Enforce Settlement, Defendant hereby relies upon the facts as set forth in the attached Motion, MCL 290.721, MCL 691.1556(a), the applicable case law, as well as this Court's discretion in support of Defendant's Motion to Reinstate to Approve and Enforce Settlement.

WHEREFORE, Defendant, Allstate Insurance Company respectfully requests that this Honorable Court enter an Order granting Defendant's Motion to Reinstate to Approve and Enforce Settlement.

Respectfully Submitted by,

VANDEVEER GARZIA, P.C.

By: /s/Donald Brownell
DONALD C. BROWNELL (P48848)
NICOLAS A. VESPRINI (P66061)
Attorneys for Defendant
840 W. Long Lake Road, Suite 600
Troy, MI 48098-6330
(248) 312-2800

Date: January 7, 2015

VANDEVEER GARZIA, P.C.

PROOF OF SERVICE

The undersigned certifies that on January 9, 2015, a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by electronic filing with the Clerk of the Court which will send notification of such filing to the foregoing attorneys of record. I declare under the penalty of perjury that the statement above is true to the best of my information knowledge and belief.

VANDEVEER GARZIA, P.C.

By: /s/Donald C. Brownell
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Magistrate Randon

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NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's Motion to Reinstate to Approve and Enforce Settlement will be brought on for hearing before Hon. Gershwin Drain **on a date and time to be set by the Court.**

VANDEVEER GARZIA, P.C.

By: /s/ Donald C. Brownell
DONALD C. BROWNELL (P48848)
NICOLAS A. VESPRINI (P66061)
Attorneys for Defendant

Dated: January 9, 2015

VANDEVEER GARZIA, P.C.